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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

THE PEOPLE,

Plaintiff and Respondent,

v.

JESSE EARL BREW,

Defendant and Appellant.

B289733

(Los Angeles County
Super. Ct. No. TA143994)

APPEAL from a judgment of the Superior Court of Los Angeles County. Sean D. Coen, Judge. Affirmed and remanded with directions.

Catherine White, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Steven D. Matthews and Ryan M. Smith, Deputy Attorneys General, for Plaintiff and Respondent.

* * * * *

DISCUSSION

Defendant and appellant Jesse Earl Brew was convicted by jury of assault with a deadly weapon. His sentence of eight years included a five-year enhancement for a prior serious felony pursuant to Penal Code section 667, subdivision (a)(1). At the time of sentencing, the trial court had no authority to strike this enhancement. Senate Bill 1393 (2017-2018 Reg. Sess.), now codified in Penal Code sections 667 and 1385, which became effective January 1, 2019, removed the restriction prohibiting a judge from striking a prior serious felony conviction in connection with the imposition of the five-year enhancement. (Stats. 2018, ch. 1013, § 1, § 2.) It is already well settled this new law applies retroactively to cases that are not final because they are pending on appeal. Respondent agrees we should remand. Defendant raises no other issue on appeal.

DISPOSITION

We remand so the trial court may exercise its discretion whether to strike defendant's five-year serious felony enhancement. On remand, the trial court may strike the enhancement or strike only the punishment for the enhancement. (§ 1385, subd. (a).) We express no opinion as to how the trial court should exercise its discretion. At the resentencing hearing, defendant has the right to the assistance of counsel, and unless he chooses to forgo it, the right to be present. (*People v. Rodriguez* (1998) 17 Cal.4th 253, 258–260.)

The judgment is affirmed in all other respects.

GRIMES, J.

WE CONCUR:

BIGELOW, P. J.

WILEY, J.